

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

AVERY ALLEN CHURCH JR.,

Case No. 2:18-cv-00053-JCM-CWH

Plaintiff,

ORDER

v.

**NEVADA DEPARTMENT OF
CORRECTIONS et al.,**

Defendants.

This action is a pro se amended civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma pauperis*. (ECF No. 10). Based on the financial information provided, the Court finds that Plaintiff is unable to prepay the full filing fee in this matter.

The Court entered a screening order on January 7, 2019. (ECF No. 11). A follow-up order imposed a 90-day stay and the Court entered a subsequent order in which the parties were assigned to mediation by a court-appointed mediator. (ECF Nos. 18, 20). The Office of the Attorney General has filed a status report indicating that settlement has not been reached and informing the Court of its intent to proceed with this action. (ECF No. 24).

According to the NDOC inmate database, Plaintiff is no longer serving his incarceration in out-of-state confinement in Connecticut but is now at High Desert State Prison. However, Plaintiff has not changed his address with this Court. The Court notes that pursuant to Nevada Local Rule of Practice IA 3-1, a “pro se party must immediately file with the court written notification of any change of mailing address, email address, telephone number, or facsimile number. The notification must include proof of service on each opposing party or the party’s attorney. Failure to comply with this rule may result in the dismissal of the action, entry of default judgment, or other sanctions as deemed appropriate by the court.” Nev. Loc. R. IA 3-1. The Court will change Plaintiff’s address

1 of record this one time but notes that if Plaintiff fails to keep the Court apprised of his
2 current address, the Court will dismiss his case.

3 For the foregoing reasons, **IT IS ORDERED** that:

4 1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 10) is
5 **GRANTED**. Plaintiff shall not be required to pay an initial installment of the filing fee. In
6 the event that this action is dismissed, the full filing fee must still be paid pursuant to 28
7 U.S.C. § 1915(b)(2).

8 2. The movant herein is permitted to maintain this action to conclusion without
9 the necessity of prepayment of any additional fees or costs or the giving of security
10 therefor. This order granting leave to proceed *in forma pauperis* shall not extend to the
11 issuance and/or service of subpoenas at government expense.

12 3. Pursuant to 28 U.S.C. § 1915(b)(2), the Nevada Department of Corrections
13 shall pay to the Clerk of the United States District Court, District of Nevada, 20% of the
14 preceding month's deposits to Plaintiff's account (**Avery Allen Church Jr., #91103**), in
15 the months that the account exceeds \$10.00, until the full \$350.00 filing fee has been paid
16 for this action. The Clerk of the Court shall **SEND** a copy of this order to the Finance
17 Division of the Clerk's Office. The Clerk of the Court shall also **SEND** a copy of this order
18 to the attention of the Chief of Inmate Services for the Nevada Department of Corrections,
19 P.O. Box 7011, Carson City, NV 89702.

20 4. The Clerk of the Court shall electronically **SERVE** a copy of this order and
21 a copy of Plaintiff's amended complaint (ECF No. 9) on the Office of the Attorney General
22 of the State of Nevada by adding the Attorney General of the State of Nevada to the
23 docket sheet. This does not indicate acceptance of service.

24 5. Service must be perfected within ninety (90) days from the date of this order
25 pursuant to Fed. R. Civ. P. 4(m).

26 6. Subject to the findings of the screening and follow-up orders (ECF Nos. 11,
27 18), within twenty-one (21) days of the date of entry of this order, the Attorney General's
28 Office shall file a notice advising the Court and Plaintiff of: (a) the names of the defendants

1 for whom it accepts service; (b) the names of the defendants for whom it does not accept
2 service, and (c) the names of the defendants for whom it is filing the last-known-address
3 information under seal. As to any of the named defendants for whom the Attorney
4 General's Office cannot accept service, the Office shall file, under seal, but shall not serve
5 the inmate Plaintiff the last known address(es) of those defendant(s) for whom it has such
6 information. If the last known address of the defendant(s) is a post office box, the Attorney
7 General's Office shall attempt to obtain and provide the last known physical address(es).

8 7. If service cannot be accepted for any of the named defendant(s), Plaintiff
9 shall file a motion identifying the unserved defendant(s), requesting issuance of a
10 summons, and specifying a full name and address for the defendant(s). For the
11 defendant(s) as to which the Attorney General has not provided last-known-address
12 information, Plaintiff shall provide the full name and address for the defendant(s).

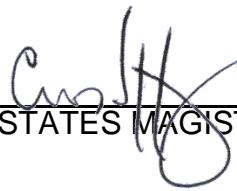
13 8. If the Attorney General accepts service of process for any named
14 defendant(s), such defendant(s) shall file and serve an answer or other response to the
15 amended complaint (ECF No. 9) within sixty (60) days from the date of this order.

16 9. Henceforth, Plaintiff shall serve upon defendant(s) or, if an appearance has
17 been entered by counsel, upon their attorney(s), a copy of every pleading, motion or other
18 document submitted for consideration by the Court. Plaintiff shall include with the original
19 document submitted for filing a certificate stating the date that a true and correct copy of
20 the document was mailed or electronically filed to the defendants or counsel for the
21 defendants. If counsel has entered a notice of appearance, Plaintiff shall direct service
22 to the individual attorney named in the notice of appearance, at the physical or electronic
23 address stated therein. The Court may disregard any document received by a district
24 judge or magistrate judge which has not been filed with the Clerk, and any document
25 received by a district judge, magistrate judge, or the Clerk which fails to include a
26 certificate showing proper service.

27 10. This case is no longer stayed.
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1 11. The Clerk of the Court will change Plaintiff's address of record to High
2 Desert State Prison, P.O. Box 650, Indian Springs, Nevada 89070-0650 and update
3 Plaintiff's inmate number to his NDOC prison number, #91103.

4 DATED: June 25, 2019

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7 UNITED STATES MAGISTRATE JUDGE

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